

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERESA BENSON,
Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Defendant.

No. C 10-843 MHP (pr)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

INTRODUCTION

Theresa Benson, an inmate at the Federal Correctional Institution in Dublin, filed a pro se civil rights complaint under 42 U.S.C. § 1983 concerning a variety of conditions at the Santa Rita jail in Alameda County, where she formerly was housed. Her complaint is now before the court for review pursuant to 28 U.S.C. § 1915A.

DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. §1915A(a). The court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §1915A(b)(1),(2).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
2 a right secured by the Constitution or laws of the United States was violated and (2) that the
3 violation was committed by a person acting under the color of state law. See West v. Atkins,
4 487 U.S. 42, 48 (1988).

5 Benson's complaint is long on generalities and short on specifics about the conditions
6 she found disagreeable at the Santa Rita jail. She must file an amended complaint that cures
7 the deficiencies identified in this order.

8 First, the amended complaint must allege facts that show constitutional violations.
9 The amended complaint should describe what happened, when it happened and how it
10 violated her constitutional rights. Although the amended complaint need not provide every
11 specific detail of the incident, the allegations need to be more detailed than the "deprived of
12 food" and "sleep deprivation was a torture method" kind of generalities Benson used in the
13 original complaint. This is because some instances of food deprivation or sleep deprivation
14 (e.g., being deprived of one sandwich or being kept awake an hour after one's preferred
15 bedtime) are too trivial to implicate the constitution while others (e.g., no food or sleep for a
16 full week) would violate the constitution – the court cannot determine whether a claim has
17 been stated without some details. Similarly, the court cannot determine whether a claim has
18 been stated as to a denial of exercise and medications because the allegations are too
19 generalized.

20 With regard to the claim that she was denied medication, plaintiff must allege in her
21 amended complaint what medicine was denied, what the medication was used for when she
22 received it, how long the medicine was denied, and the consequence of the denial of the
23 medicine. She also must link defendants to this claim. To prove that the response of jail
24 officials to an inmate's medical needs was constitutionally deficient, the prisoner must
25 establish (1) a serious medical need and (2) deliberate indifference to that need by jail
26 officials. See McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992), overruled on
27 other grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en
28 banc). A jailer is deliberately indifferent if he knows that a prisoner faces a substantial risk

1 of serious harm and disregards that risk by failing to take reasonable measures to abate it.
2 See Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994).

3 Second, the complaint does not name any individual defendants and does not link any
4 defendant to the claims asserted. In addition to providing factual information to show that
5 constitutional violations occurred (as discussed above), plaintiff must allege in her amended
6 complaint who caused those constitutional violations. In her amended complaint, she needs
7 to link each defendant to her claims by alleging facts showing the basis for liability for each
8 individual defendant. She should not refer to them as a group (e.g., "the defendants" or "the
9 medical staff"); rather, she should identify each involved person by name and link each of
10 them to her claim(s) by explaining what each defendant did or failed to do that caused a
11 violation of her constitutional rights. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988)
12 (liability may be imposed on individual defendant under § 1983 only if plaintiff can show
13 that defendant proximately caused deprivation of federally protected right).

14 The only defendant listed in the caption of the complaint is the State of California, and
15 that defendant was named apparently done on the reasoning that the State employed all the
16 people that caused her problems. However, there is no respondeat superior liability under §
17 1983, i.e., there is no liability under the theory that one is responsible for the actions or
18 omissions of an employee. The State also has Eleventh Amendment immunity from a § 1983
19 action for damages. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989). The
20 State of California therefore is dismissed as a defendant.

21 If plaintiff does not know the true names of the individuals she believes violated her
22 constitutional rights, the way to deal with the unknown persons is to refer to them as John
23 Doe defendants (for the men) and Jane Doe defendants (for the women). If plaintiff does not
24 know the true name of the alleged wrongdoers, she may use Doe defendant designations, so
25 that each person is separately identified as a Doe defendant, e.g., John Doe # 1, John Doe #2,
26 Jane Doe # 1, Jane Doe # 2, etc. She must allege what each Doe defendant did or failed to do
27 that caused a violation of her constitutional rights. Plaintiff is cautioned that, although the
28 use of Doe defendants is acceptable to withstand dismissal of the complaint at the initial

1 review stage, using Doe defendants creates its own problem: those persons cannot be served
2 with process in this action until they are identified by their real names. The burden remains
3 on the plaintiff to promptly discover the real names of the Doe defendants; the court will not
4 undertake to investigate the names and identities of unnamed defendants.

5 Third, plaintiff needs to state in her amended complaint whether she was a pretrial
6 detainee or a convict at the time of the alleged constitutional violations. Some of her claims
7 would arise under the Fourteenth Amendment's Due Process Clause if she was a pretrial
8 detainee and under the Eighth Amendment if she had been convicted, although the Eighth
9 Amendment serves as a benchmark for evaluating the Fourteenth Amendment claims. See
10 Carnell v. Grimm, 74 F.3d 977, 979 (9th Cir. 1996); Redman v. County of San Diego, 942
11 F.2d 1435, 1443 (9th Cir. 1991) (en banc).

12 Fourth, plaintiff needs to present a complete statement of her claim(s). She attached
13 several grievances to her complaint apparently as a way to explain her problem. The court
14 will not read through exhibits to piece together a claim for a plaintiff who has not pled one.
15 It is plaintiff's obligation to write out a complete statement of her claim(s) in her amended
16 complaint. The court also notes that several of the exhibits attached to the complaint were of
17 such poor copy quality that the court cannot read the handwriting on them.

18 Fifth, plaintiff's allegations that some of her personal property items was lost or stolen
19 while in the county jail do not state a claim upon which relief can be granted. Allegations
20 that a plaintiff has been deprived of her property negligently or intentionally without a pre-
21 deprivation hearing do not state a due process claim under § 1983 if the deprivation was
22 random and unauthorized, see Parratt v. Taylor, 451 U.S. 527, 535-44 (1981) (state employee
23 negligently lost prisoner's hobby kit), overruled in part on other grounds, Daniels v.
24 Williams, 474 U.S. 327, 330-31 (1986); Hudson v. Palmer, 468 U.S. 517, 533 (1984)
25 (intentional destruction of inmate's property), because California provides an adequate state
26 post-deprivation remedy, see Zinermon v. Burch, 494 U.S. 113, 128-29 (1990) (where state
27 cannot foresee and therefore provide meaningful hearing prior to deprivation, statutory
28 provision for post-deprivation hearing or common law tort remedy for erroneous deprivation

1 satisfies due process); Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994) (citing Cal.
2 Gov't Code §§ 810-895). The allegations in the complaint indicate random and unauthorized
3 deprivations of personal property, but that kind of conduct does not amount to a violation of
4 any federal constitutional right. Unauthorized deprivations of personal property may amount
5 to state law violations but do not amount to federal due process violations.

6 CONCLUSION

7 The complaint is DISMISSED with leave to amend. The amended complaint must be
8 filed no later than **September 30, 2010**, and must include the caption and civil case number
9 used in this order and the words AMENDED COMPLAINT on the first page. Plaintiff is
10 cautioned that her amended complaint must be a complete statement of her claims and will
11 supersede existing pleadings. See London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
12 Cir. 1981) ("a plaintiff waives all causes of action alleged in the original complaint which are
13 not alleged in the amended complaint.") Failure to file the amended complaint by the
14 deadline will result in dismissal of this action.

15 IT IS SO ORDERED.

16 Dated: August 24, 2010


Marilyn Hall Patel
United States District Judge